



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

48 CFR Parts 1511 and 1552

[EPA-HQ-OARM-2012-0476; FRL-9913-37-OARM]

EPAAR Clause for Work Assignments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to update policy, procedures, and contract clauses. The proposed rule updates EPAAR clause 1552.211-74, *Work Assignments*.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-HQ-OARM-2012-0476, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: valentino.thomas@epa.gov
- Mail: **EPA-HQ-OARM-2012-0476**, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Please include a total of three (3) copies.
- Hand Delivery: EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave, NW, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-HQ-OARM-2012-0476**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket, and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment, and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov, or in hard copy at the Office of Environmental Information (OEI) Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC.

The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-4522; e-mail address: valentino.thomas@epa.gov .

SUPPLEMENTARY INFORMATION:

I. General Information

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI, and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions -The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or

section number.

- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On 3 December 2009 the Office of Acquisition Management (OAM) Head of the Contracting Activity (HCA) issued a class deviation that revised the prescription for the subject clause by eliminating the requirement that EPA include total estimated labor hours when issuing work assignments. The revised prescription is necessary because including total estimated labor hours when work assignments are issued undermines the negotiation process by providing the contractor no incentive to seek more efficient or innovative approaches to meet the Government's needs under a work assignment. The revised prescription advises contracting officers (COs) that when the nature of the work is nonspecific with changing circumstances (e.g., services at new hazardous waste sites, R&D in new areas with uncertain potential results) then the CO may provide the contractor with the estimated labor hours. Otherwise, COs should not authorize the contractor to expend the level of effort beyond the effort needed to develop the work plan. The

revised prescription was published in the Federal Register on 14 February 2012. As a result, the subject clause text is being updated to make it consistent with the revised prescription.

In addition, the WA clause prescription is modified to make the clause applicable to EPA cost-reimbursement contracts, and the subject prescription and clause are being updated to add two alternate clause versions. Currently the subject clause has Alternates I and II that are used in Superfund contracts and require the contractor to provide a COI certification. This clause update adds Alternates III and IV which are substantially the same as I and II but are written for non-Superfund contracts. A class deviation for Alternates III and IV was issued by the HCA on 29 June 1994.

III. Proposed Rule

This proposed rule amends the EPAAR to revise paragraphs (b) and (c) in EPAAR clause 1552.211-74, *Work Assignments*, and revises paragraph (b) of its corresponding 1511.011-74 prescription. Alternates III and IV are also being added to clause 1552.211-74.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO)12866 (58 FR 51735, October 4, 1993) and therefore, not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. No information is collected under this action.

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's final rule on small entities, "small entity" is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action revises a current EPAAR provision and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4,

establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications.” This rule does not have tribal implications as specified in Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled “Protection of Children from Environmental Health and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution of Use” (66 FR 28335 (MAY 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) (15 U.S.C 272 note) of NTTA, Public Law 104-113, directs EPA to use voluntary consensus standards in it’s regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to

use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rulemaking does not involve human health or environmental effects.

List of Subjects in 48 CFR Parts 1511 and 1552

Describing Agency Needs, Solicitation Provisions and Contract Clauses.

Dated: June 11, 2014.

John R. Bashista,
Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

1. The authority citation for 48 CFR parts 1511 and 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

PART 1511-DESCRIBING AGENCY NEEDS

2. Revise paragraph (b) of 1511.011-74 to read as follows:

1511.011-74 Work Assignments.

* * * * *

(b) *Contract Clause*. The CO shall insert the contract clause at 1552.211.74, *Work Assignments*, in cost-reimbursement contracts when work assignments are used.

(1) For Superfund contracts, except for contracts which require annual conflict of interest certificates (e.g., Site-Specific contracts, the Contract Laboratory Program (CLP), Sample Management Office (SMO) contracts), the CO shall use the clause with either Alternate I or Alternate II. Alternate I shall be used for contractors who have at least three (3) years of records that may be searched for certification purposes. Alternate II shall be used for contractors who do not have at least three (3) years of records that may be searched.

(2) For non-Superfund contracts, the CO shall use the clause with either Alternate III or Alternate IV. Alternate III shall be used for contractors who have at least three (3) years of records that may be searched for certification purposes. Alternate IV shall be used for contractors who do not have at least three (3) years of records that may be searched.

PART 1552-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise 1552.211-74 to read as follows:

1552.211-74 Work Assignments.

As prescribed in 1511.011-74, insert the following contract clause in cost-reimbursement contracts when work assignments are to be used.

WORK ASSIGNMENTS (____ 2013)

(a) The contractor shall perform work under this contract as specified in written work assignments issued by the Contracting Officer.

(b) Each work assignment may include (1) a numerical designation, (2) approved workplan labor hours or an estimated initial level of effort provided in accordance with 1511.011-74, (3) the period of performance and schedule of deliverables, and (4) the description of the work.

(c) The Contractor shall acknowledge receipt of each work assignment by returning to the Contracting Officer a signed copy of the work assignment within __ calendar days after its receipt. The Contractor shall begin working on a work plan immediately upon receipt of a work assignment. Within __ calendar days after receipt of a work assignment, the Contractor shall submit __ copies of a work plan to the Contract-level Contracting Officer's Representative and __ copies to the Contracting Officer. The work plan shall include a detailed technical and staffing plan and a detailed cost estimate. Within __ calendar days after receipt of the work plan, the Contracting Officer will provide written approval or disapproval of it to the Contractor. The Contractor is not authorized to start work without an approved work plan unless approved by the Contracting Officer or otherwise specified. Also, if the Contracting Officer disapproves a work plan, the Contractor shall stop work until the problem causing the disapproval is resolved. In either case, the Contractor shall resume work only when the Contracting Officer approves the work plan.

(d) This clause does not change the requirements of the "Level of Effort" clause, nor the notification requirements of either the "Limitation of Cost" or "Limitation of Funds" clauses.

(e) Work assignments shall not allow for any change to the terms or conditions of the contract.

Where any language in the work assignment may suggest a change to the terms or conditions, the Contractor shall immediately notify the Contracting Officer.

(End of clause)

Alternate I. As prescribed in 1511.011-74, modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest (COI) certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a COI certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential COIs, but no additional COI certifications are required.

Before submitting the COI certification, the Contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief that all actual or potential organizational COIs have been reported to the Contracting Officer, or that to the best of the Contractor's knowledge and belief, no actual or potential organizational COIs exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational COIs to the Contractor. The COI certification shall also include a statement that the Contractor recognizes its continuing

obligation to identify and report any actual or potential COI arising during performance of this work assignment or other work related to this site.

Alternate II. As prescribed in 1511.011-74, modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest (COI) certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a COI certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential COIs, but no additional COI certifications are required.

Before submitting the COI certification, the Contractor shall initially search through all of its available records to identify any actual or potential COIs. During the first three years of this contract, the Contractor shall search through all records created since the beginning of the contract plus the records of the Contractor prior to the award of the contract until a minimum of three years of records are accumulated. Once three years of records have accumulated, prior to certifying, the Contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational COIs have been reported to the Contracting Officer, or that to the best of the Contractor's knowledge and belief, no actual or potential organizational COIs exist. In addition, the Contractor must certify that its personnel who perform work under this work

assignment or relating to this work assignment have been informed of their obligation to report personal and organizational COIs to the Contractor. The COI certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential COI arising during performance of this work assignment or other work related to this site.

Alternate III. As prescribed in 1511.011-74, modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest (COI) certification.

Before submitting the COI certification, the Contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief that all actual or potential organizational COIs have been reported to the Contracting Officer, or that to the best of the Contractor's knowledge and belief, no actual or potential organizational COIs exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational COIs to the Contractor. The COI certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential COI arising during performance of this work assignment.

Alternate IV. As prescribed in 1511.011-74, modify the existing clause by adding the

following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest (COI) certification.

Before submitting the COI certification, the Contractor shall initially search through all of its available records to identify any actual or potential COIs. During the first three years of this contract, the Contractor shall search through all records created since the beginning of the contract plus records of the Contractor prior to the award of the contract until a minimum of three years of records have accumulated. Once three years of records have accumulated, prior to certifying, the Contractor shall search its records, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief that all actual or potential organizational COIs have been reported to the Contracting Officer, or that to the best of the Contractor's knowledge and belief, no actual or potential organizational COIs exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational COIs to the Contractor. The COI certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential COI arising during performance of this work assignment.

(End of clause)

